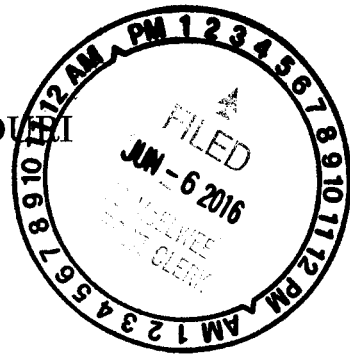


IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI



STATE OF MISSOURI ex rel.)
ATTORNEY GENERAL Chris Koster,)

Plaintiff,)

v.)

Case No. 10CM-CC00150

ETC OF MISSOURI,)
INCORPORATED and)
MICHAEL DUNCAN, and)
STEPHANIE DUNCAN,)
Defendants.)

Findings of Fact and Conclusions of Law

This matter came before the Court for trial on Plaintiff's First Amended Petition, deemed filed on February 2, 2012. Defendants were duly served and filed an answer on September 12, 2012. Plaintiff's petition alleges violations of the Missouri Clean Water Law, Sections 644.051 and 644.026.1 RSMo and the Missouri Solid Waste Management Law, Sections 260.210.1(1) and 260.210.1(5) RSMo.

Plaintiff appears by counsel, Brook D. McCarrick. Defendants appear not. Evidence was heard and adduced.

The Court admitted the following documents:

Plaintiff's Exhibit 1 - Warranty Deed;

Plaintiff's Exhibit 2 – November 17, 2011 Inspection Memorandum and attached pictures;

Plaintiff's Exhibit 7 – March 23, 2012 Inspection Report and attached letter and pictures;

Plaintiff's Exhibit 8 – May 1, 2012 Notice of Violation No. 14185SW

Plaintiff's Exhibit 11 – April 4, 2014 Site Visit Record

Plaintiff's Exhibit 20 – November 17, 2011 Site Visit Memorandum

The Court took judicial notice of the pleadings filed in this case including an Order entered on February 14, 2012; and Sections 644.026.1; 644.051.1; 644.076.1; 260.200.1; 260.210.1; and 260.240.1 RSMo.

After assessing the credibility of all witnesses, evaluating all the evidence and pleadings filed in this case, and considering the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. Defendants own and operate a dock foam recycling business located at 39 Wolf Pen Hollow Road, Camdenton, Camden County, Missouri.
2. The Wolf Pen Hollow Road property is owned by Defendant, Education to Careers (ETC).
3. The Defendants do not have a permit issued by the Missouri Department of Natural Resources (DNR) to operate a water contaminant source nor is the property a permitted solid waste disposal area.

4. Since at least 2009, Defendants have accumulated approximately 20,000 cubic yards of used block and granulated dock foam covering approximately 7 acres of the ETC property.

5. The Defendants have been unable to contain the dock foam within the boundaries of the ETC property and the foam has migrated onto adjacent properties, a nearby stream, and into Lake of the Ozarks.

6. DNR received a number of complaints concerning the dock foam.

7. On February 14, 2012, this Court entered an Order granting DNR access to the property located at 39 Wolf Pen Hollow Road as well as any adjacent property owned, possessed, or controlled by the Defendants to effectuate an inspection. The Order prohibits the Defendants from interfering with the inspection and states that DNR may request assistance from the Camden County Sheriff.

8. On November 17, 2011, DNR, after notifying the Defendants, Michael and Stephanie Duncan, attempted to conduct an inspection of the ETC property.

9. When DNR arrived at the property, Defendant, Stephanie Duncan, refused to allow DNR inspectors onto the property to conduct an inspection.

10. After Stephanie Duncan refused to allow DNR personnel onto the ETC property, DNR inspectors examined adjacent waterways and observed

foam particles in and along the banks of a tributary that flows through and downstream from, the ETC property and into Lake of the Ozarks.

11. On March 23, 2012, DNR conducted a compliance inspection of the ETC property to determine compliance with the Missouri Clean Water Law. During the inspection, DNR inspectors observed mounds of granulated dock foam at various locations throughout the property that varied in depth from several inches to a few feet. The inspectors also observed approximately 7,900 to 9,000 cubic yards of dock foam blocks stacked in various locations around the property.

12. After leaving the property, the inspectors examined the tributary that ran through the ETC property and discovered granulated dock foam all throughout the tributary and along the shoreline of Lake of the Ozarks.

13. Following the March 23, 2012 inspection, DNR issued a notice of violation to Defendants, Michael and Stephanie Duncan apprising the Defendants that they were in violation of Missouri Clean Water Law and Missouri Solid Waste Management Law, and instructing the Defendants to apply for a Missouri State Operating Permit, to implement actions to stop the migration of the dock foam off-site, and to clean-up all dock foam that cannot reasonably be recycled.

14. On March 31, 2016, DNR inspectors contacted Defendant Stephanie Duncan, and told her that they wanted to conduct a site visit to

assess the status of the ETC property on April 4, 2016. Defendant, Stephanie Duncan, stated that they would not be allowed on the property.

15. On April 4, 2016, DNR, accompanied by a Camden County Deputy, conducted a site visit at the ETC property. During the visit, DNR inspectors observed stacks of block dock foam multiple feet high, mounds of granulated dock foam multiple feet deep, styrofoam particles throughout the tributary running through the ETC property, and styrofoam particles along the shoreline of Lake of the Ozarks.

16. The tributary and Lake of the Ozarks contain various aquatic life.

17. The styrofoam present on the ETC property is a particulate matter that has entered a tributary and Lake of the Ozarks and renders those waters harmful to the aquatic life therein.

18. The Styrofoam is a solid waste material resulting from industrial, commercial or domestic activities that was subsequently discarded on the ETC property and the adjacent waterways.

19. DNR has received grant money to assist with the clean-up of dock foam in the Lake area.

20. Waste Corp. of Missouri has agreed to provide loading assistance and transportation of the foam from the ETC site as part of a supplemental environmental project.

Conclusions of Law

1. This Court has subject matter jurisdiction of this matter pursuant to § 478.070 RSMo.
2. The Department of Natural Resources is vested with the authority and responsibility for enforcing the state's environmental statutes and implementing regulations.
3. The styrofoam on the ETC property is a water contaminant as that term is defined in Section 644.016(24).
4. Defendants, by virtue of their engagement in dock foam recycling activities, operate, use, and maintain a water contaminant source, as defined in Section 644.016(25) RSMo, and are subject to the permitting requirements of Section 644.051.1.2 RSMo.
5. Defendants, in violation of Section 644.051.1.2 did not have a permit to operate a water contaminant source.
6. The Styrofoam on the ETC property has caused and continues to cause pollution, as that term is defined in Section 644.016(17) RSMo, to a tributary and to Lake of the Ozarks in violation of 644.051.1(1) RSMo.
7. The tributary and Lake of the Ozarks are waters of the state, as that term is defined in Section 644.016(27) RSMo.
8. The Styrofoam is a solid waste, as that term is defined in Section 260.200.1(46) RSMo.

9. ETC is not a permitted solid waste disposal facility, as that term is defined in Section 260.200(47) RSMo.

10. The Defendants dumped or deposited or permitted the dumping and depositing of used dock foam on the ETC property and into adjacent waters of the state in violation of 260.210.1(1). RSMo.

11. Section 644.026.1 RSMo authorizes DNR representatives from the water protection program to enter onto any private or public property in order to effectuate an inspection and conduct an investigation into suspected violations of Missouri Clean Water Law.

12. Defendants refused to allow DNR representatives from the water protection program onto the ETC property to inspect said property and conduct an investigation into suspected violations of Missouri's Clean Water Laws in violation of Section 644.026.1(21) RSMo.

13. Section 260.210.1(5) RSMo authorizes DNR representatives from the solid waste management program to enter onto any private or public property in order to effectuate an inspection and conduct an investigation into suspected violations of Missouri's Solid Waste Management Law.

14. Defendants refused to allow DNR representatives from the solid waste management program onto the ETC property to inspect said property and investigate suspected violations of the solid waste management law in violation of Section 260.210.1(5) RSMo.

15. Defendants are subject to injunctive relief and civil penalties for violations of Missouri Clean Water Law, Section 644.076.1, and Missouri Solid Waste Management Law, Section 260.240.1 in the amount of \$10,000.00 and \$8,000.00, respectively.

FINAL JUDGMENT AND ORDER OF PERMANENT INJUNCTION

Having made the preceding findings of fact and conclusions of law, this Court enters the following final judgment and order against Defendants ETC of Missouri, Incorporated, Michael Duncan and Stephanie Duncan:

1. Defendants are hereby enjoined from accepting or processing any dock foam materials and/or styrofoam at the ETC property;
2. Within 14 days of service or receipt of this judgment, Defendants, Michael Duncan or Stephanie Duncan, shall contact Mary Hopke, Environmental Specialist, Solid Waste Management Program, at 573-526-3932 to make arrangements for the removal of the dock foam/Styrofoam on the ETC property;
3. In the event the Defendants fail to contact Mary Hopke at the number set forth in paragraph 2 above, within 14 days of receipt of this judgment to make arrangements with the DNR for the removal of the dock foam/styrofoam, DNR representatives, Waste Corp of Missouri, and their contractors shall have the right of entry onto the ETC property to remove the

dock foam/styrofoam on the property and in adjacent waterways and eliminate the water contaminant source;

4. Defendants are enjoined from interfering with DNR and Waste Corp. of Missouri and any contractors hired by Waste Corp. of Missouri, in their efforts to assist in the removal of the dock foam from the ETC property and any adjacent waterways;

5. Defendants are ordered not to interfere with, or impede any task undertaken by the DNR, Waste Corp. of Missouri, or their Contractors to aid in the removal of the dock foam from the ETC property and any adjacent waterways;

6. The DNR and Waste Corp. of Missouri and its contractors shall have the right of entry onto the ETC property and any other site owned or in the possession of the Defendants that contain dock foam/styrofoam, at all reasonable times, upon presentation of credentials, to:

- A. aid in the removal of the dock foam from the ETC property as funding permits;
- B. monitor the progress of activities required under this Judgment; and,
- C. assess Defendants' compliance with this Judgment;

7. In the event the DNR lacks adequate funds to remove all dock foam and/or styrofoam from the ETC property and adjacent waterways,

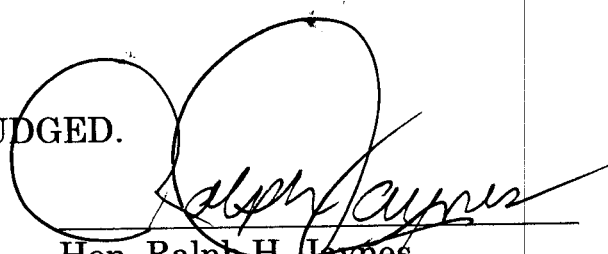
Defendants are ordered to remove all remaining dock foam/styrofoam on the property;

8. Defendants are ordered to dispose of all dock foam materials or styrofoam at a processing site approved by the department or in a permitted transfer station or landfill.

9. This matter is set for review on AUGUST 8, 2016 @ 9:00 A.M., to assess Defendants' compliance with this judgment and to determine whether to assess civil penalties not to exceed \$10,000.00 per day for each day of violation of Missouri Clean Water Law and \$1,000.00 per day for each day of violation of Missouri Solid Waste Management Law.

10. Clerk to provide copies of this judgment to Michael Duncan, Stephanie Duncan, and ETC of Missouri Incorporated c/o Michael Duncan, Registered Agent, at 39 Wolf Pen Hollow Road, Camdenton, MO 65020.

IT IS SO ORDERED AND ADJUDGED.


Hon. Ralph H. Jaynes
Circuit Judge

JUNE 3, 2016
Date